

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BERNARD WILLIAM KADE,

Defendant,

and

BUDGET BAIL BOND AGENCY, LLC,

Appellant.

UNPUBLISHED

June 6, 2013

No. 308512

Oakland Circuit Court

LC No. 2011-237340-FH

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Budget Bail Bond Agency, LLC (Budget Bail) appeals as of right a judgment entered against it in this bail bond forfeiture matter. We reverse, in part, and remand for amendment of the judgment of bond forfeiture.

Defendant was charged with his third offense of operating a motor vehicle while intoxicated and his second offense of operating a motor vehicle while license suspended. He was released from custody after posting a \$10,000 surety bond executed by Budget Bail. After defendant failed to meet the conditions of his bond, it was revoked. An order for a bench warrant and bond forfeiture was entered. The trial court also entered an order to show cause why a judgment should not enter against Budget Bail, as the surety, for the full amount of the bond. Subsequently, a default judgment was entered against Budget Bail for the full amount of the bond. However, because the default judgment incorrectly indicated that Budget Bail failed to appear at the show cause hearing, an amended default judgment was later entered for the full amount of the bond, \$10,000.

Budget Bail then filed a motion to set aside the amended default judgment, arguing that the judgment improperly identified Budget Bail as the surety on defendant's bond. Although Budget Bail did not dispute the forfeiture of the bail bond, it argued that it was appointed by power of attorney of Financial Casualty & Surety, Inc. (Financial Casualty) to act as its bail agent and executed the bail bond on Financial Casualty's behalf. Accordingly, Financial Casualty was the surety on the bond and should have been named in the judgment, not Budget Bail. The power of attorney was attached to the bail bond. Budget Bail also attached the affidavit of Eugene Butler, a representative of Budget Bail, who averred that he attended the show cause hearing and "the prosecutor was not willing to correctly identify the proper Surety." Butler further averred that Budget Bail was merely the agency that wrote the bail bond on behalf of the insurance company, Financial Casualty, which was the surety on the bail bond. Accordingly, Budget Bail argued, the judgment against it should be set aside or, in the alternative, it was entitled to relief from the judgment.

The prosecution responded to Budget Bail's motion, arguing that Budget Bail was "the contracted surety to the Oakland County Court." While Budget Bail may be an agent of the underlying insurer, Financial Casualty, such relationship did not define its relationship with the trial court. Because Budget Bail was approved by the court as a surety and posted defendant's bond, it was the commercial surety subject to forfeiture of the bond. Further, Budget Bail signed the bail bond and received proper and timely notice of all relative events. Accordingly, the prosecution argued, Budget Bail's motion should be denied. Following oral arguments on the motion, the trial court agreed with the prosecutor and denied Budget Bail's motion to set aside the amended default judgment. After Budget Bail's motion for reconsideration was denied, this appeal followed.

Budget Bail argues that the amended default judgment improperly identified it as the surety on the forfeited bond; thus, it was entitled to relief from the judgment. We agree, in part.

We note that the parties, and the trial court, have called the judgment entered in this matter a "default judgment." As explained by our Supreme Court in *Rogers v JB Hunt Transport, Inc.*, 466 Mich 645, 653; 649 NW2d 23 (2002), a "[d]efault is a punitive measure, appropriate in defined circumstances, the threat of which encourages the cooperation of parties to a suit." That is, rules governing "default judgments are narrowly designed to sanction an uncooperative party." *Id.* In this case, it does not appear that Budget Bail was "an uncooperative party" or that the judgment was entered as a "punitive measure" to encourage its cooperation.

Rather, after defendant defaulted on the recognizance, Budget Bail appeared at the show cause hearing and notified the prosecutor that it was not the surety on the bond. See MCL 765.28. But the court entered a judgment against Budget Bail for the full amount of the bond. Thus, the judgment entered was a judgment of bond forfeiture. Shortly thereafter, Budget Bail filed a motion seeking to set aside the default judgment or, in the alternative, relief from the judgment pursuant to MCR 2.612(C). Bond forfeiture actions are civil, not criminal actions. See *People v Tom Johnson*, 72 Mich App 702, 709; 250 NW2d 508 (1976). Thus, Budget Bail

properly sought relief from the judgment pursuant to MCR 2.612(C) on the ground that Budget Bail was improperly identified as the surety on the bond. Generally, this Court reviews for an abuse of discretion a decision pursuant to MCR 2.612. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

MCR 6.106(E)(1)(b)(i) provides that the court may require a defendant to post “a surety bond that is executed by a surety approved by the court in an amount equal to the full bail amount.” A surety bond “is a promise made by the surety that if the principal [i.e., defendant] defaults, the surety will pay the judgment on the bond.” *Tom Johnson*, 72 Mich App at 707-708.

In this case, defendant was required to post a surety bond in the full amount of the bail, \$10,000. Budget Bail executed a bail bond in the amount of \$10,000. However, Budget Bail argues here, as it did in the trial court, that it was appointed by power of attorney of Financial Casualty to act as its bail agent and executed the bail bond on Financial Casualty's behalf; thus, Financial Casualty was the surety on the bond and should have been named in the judgment, not Budget Bail.

The power of attorney attached to the bail bond located in the lower court record supports Budget Bail's claim. “A primary purpose of a power of attorney is to evidence the delegation of authority to perform particular legal acts, which the principal could personally perform, to an appointed agent.” *Persinger v Holst*, 248 Mich App 499, 504; 639 NW2d 594 (2001). The power of attorney in this case provides, in relevant part, that Financial Casualty appointed “the named agent its true and lawful Attorney-in-Fact for it and in its name, place, and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only.” Financial Casualty's “named agent” was James D. Williams, from Budget Bail. Budget Bail's address and telephone number were set forth on the bottom edge of the power of attorney, which included a “Forfeiture Email” address. Further, Budget Bail provided the lower court with a copy of the General Agent Bail Bond Agreement between itself and Financial Casualty. Thus, it appears from the record evidence that the surety on the bond at issue was Financial Casualty, not Budget Bail. Accordingly, the trial court abused its discretion when it denied Budget Bail's motion seeking relief from the judgment on the ground that Financial Casualty was the surety and should have been identified as such in the judgment of bond forfeiture. MCL 765.28 provides for the entry of judgment against the surety on the recognizance, not the surety's agent. We, therefore, remand this matter for amendment of the judgment of bond forfeiture to identify Financial Casualty as the surety which forfeited the entire amount of the bond, \$10,000.

Further, because Budget Bail was Financial Casualty's agent, and it is undisputed that Budget Bail received the requisite notice of the forfeiture proceedings, Financial Casualty is charged with notice of those proceedings. “The general rule of agency that the principal is chargeable with, and is bound by, the knowledge of or notice to his agent received while the agent is acting within the scope of his authority, and which is in reference to a matter over which his authority extends, is fully applicable to agents of insurance companies.” *Hawkeye Cas Co v Holcomb*, 302 Mich 591, 604; 5 NW2d 477 (1942) (citation omitted). However, Budget Bail did not dispute the forfeiture of the bail bond in the trial court, and does not contest any aspect of the forfeiture proceedings on appeal; the amount of the forfeited bond has already been remitted to the trial court. Rather, throughout these proceedings Budget Bail has only contested the identity

of the surety set forth in the judgment of bond forfeiture; accordingly, the judgment is affirmed in all other respects.

Reversed, in part, and remanded for amendment of the judgment of bond forfeiture consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan